

Indeed, as discussed by the Commission in the *NPRM*, CLECs should be able to inspect space as long as no breach of security exists.¹⁰

In short, the Commission should compel all ILECs to open up their central offices to reasonable inspection in instances where they have denied a CLEC physical collocation based on a lack of collocation space.

**3. ILEC Collocation Charges Are Unduly Excessive and Must be Offered to Competing Providers in a Manner that Reduces Current Costs.
(NPRM ¶¶ 141-143)**

Many ILECs demonstrate their unwillingness to compete fairly through exorbitant collocation fees. Collocation fees generally include: an application fee, an initial build out fee, rent for a one hundred (100) square foot cage, power for the collocated equipment, and various other administrative fees. While MGC recognizes that the United States Court of Appeals for the Eighth Circuit (“Eighth Circuit”) has held that the state commissions have been granted exclusive jurisdiction under the 1996 Act to establish prices for intrastate access and interconnection,¹¹ Section 251(d) of the 1996 Act nevertheless clearly provides the Commission with broad discretion to implement the provisions contained in Section 251 – including collocation. To this end, MGC requests that the Commission establish specific guidelines designed to preclude and preempt the types of anti-competitive ILEC behavior that are demonstrated below.

a) Application Fees

Most ILECs charge a high, non-refundable non-recurring application fee to process CLEC request for collocation space. This fee should not exist at all; however, the non-

¹⁰ *NPRM* at ¶ 146.

¹¹ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 793-800 (8th Cir. 1997)

refundable aspect is especially problematic given the fact that submitting an application is no guarantee that a CLEC will be awarded space. The application process generally not only requires a non-refundable application fee, but CLECs usually are required to complete lengthy applications, some more than twenty (20) pages long. Such comprehensive documentation is unnecessary when the company applying for space has already been certificated to operate as a CLEC in the relevant state. Additionally, this process represents a drain on already limited CLEC resources, forcing the CLEC to engage its staff in burdensome, unnecessary administration.

MGC suggests that the Commission require ILECs to eliminate their usage of an initial non-refundable collocation application fee, and issue guidelines regarding the CLEC collocation application process, using Pacific Bell's application process as the model for other ILECs. Pacific Bell's process begins with the CLEC sending a written request to Pacific Bell expressing interest in obtaining space in a particular central office. This initial request is referred to as an inquiry and it does not include any fee. Pacific Bell then responds to this inquiry with information regarding the availability of space and the cost to proceed with physical collocation. If the CLEC chooses to proceed with physical collocation, it is required at that time to submit an application to Pacific Bell, together with 50% of the build out cost.

The application fees of other ILECs are not as reasonable. For example, BellSouth charges \$3,850.00 per application and GTE charges \$5,765.00. While some fee may be necessary to cover certain limited costs, *e.g.* for checking the status of the space availability in a particular central office and for bidding out the work in order to provide the CLEC with a build out cost, the application fees charged by BellSouth and GTE are outrageous and unreasonable. The collocation application and fee represent the *initial* expression of interest by the CLEC. If

any fee is permitted to be assessed, it should be closer in amount to the Ameritech figure than to GTE's.

b) Build-Out Charges

ILECs also charge excessive fees for the build-out of physical collocation space for competing carriers. The average cost per central office is about \$50,000, but it varies significantly by ILEC, state, and central office. For example, Georgia and Illinois have adopted regulations that cap these build-out costs, barring extraordinary circumstances. The build-out cap in Georgia is approximately \$20,000, while Illinois has a cap of about \$40,000. In California, the cost for physical collocation can vary significantly by central office. Where caps for physical collocation construction costs have not been adopted, ILEC have little incentive to charge reasonable build-out rates. See Declaration of David Rahm, ¶ 8.a.iii.

Construction costs can easily be reduced. First, the CLEC should have the opportunity to manage the build-out project, as the CLEC has an incentive to receive competitive bids for the project because it benefits directly from its ability to reduce these costs. In such a case, the ILEC would be required to provide the job scope and standards, while the CLEC would hire the contractor and manage its performance. In the alternative, the ILEC should be required to demonstrate that it solicited and received multiple bids for the project in order for the CLEC to ensure that the bids are competitive. Also, the ILEC should be required to review the costs for the build-out with the CLEC, and to disclose a detailed break down of its costs. Finally, the CLEC should have the right to audit these costs. MGC therefore recommends that, irrespective of whether a state has set statutory caps on the ILEC build-out charges, the COMMISSION issue guidelines similar to these proposed requirements, in order to discourage excessive ILEC build-out costs.

c) Space Preparation Cost Sharing

In some central offices the ILEC has physical space available, but a significant amount of work is required in order to make the space suitable for collocation purposes. For example, the ILEC may need to install HVAC, power and other expensive items in order to make a room suitable for collocation equipment where it previously had been used for other purposes. It is unfair to charge the first collocating CLEC the full cost to make the room suitable for collocation. The cost should be apportioned based upon space consumed.

Certain ILECs permit the costs associated with readying a collocation site to be shared amongst competitors in a reasonable manner. For example, Pacific Bell requires the first CLEC to request collocation initially to pay for the entire cost of the project. Once other collocators are placed in the same room, however, Pacific Bell reimburses the first CLEC for a proportionate share of its build-out expenses and assesses proportionate charges on each subsequent collocator. The reason for this is simple: the first CLEC should not have to bear the entire financial burden for a project that will also benefit the ILEC, because the ILEC now is able to lease office space to other carriers for collocation purposes – space that previously could not be leased for this purpose. Pacific Bell will reimburse these initial costs for up to five (5) years, upon the receipt of an application and build-out fee from a subsequent collocator. This policy is reasonable in that it attempts to levy the costs upon the parties benefiting from the construction.

By contrast, other ILECs place the entire space renovation/build-out cost solely on the shoulders of the first CLEC to request physical collocation at that central office site. This hinders competition by requiring a CLEC to spend large amounts of money on a single collocation arrangement.

Still other ILECs, such as GTE, will only reimburse the first CLEC if another collocator enters that same central office space within one (1) year of the first CLEC. Under this unfair policy, it is entirely possible that one (1) CLEC will bear the sole financial burden for a project that will benefit GTE and other competing carriers for years to come.

MGC urges the Commission to flatly prohibit ILEC space preparation cost recovery plans that, among other things, place the entire burden for build-out costs on the initial requesting CLEC. Specifically, MGC recommends that the Commission follow the lead of the New York Public Service Commission ("PSC") and adopt the PSC's March 2, 1998 proposed plan for addressing the cost recovery issue for collocators requesting special construction by Bell Atlantic/NYNEX ("BA-NY").¹² The PSC's plan requires BA-NY initially to pay for all special construction costs of preparing the collocation space, with the exception of the pro rata share that will be paid by the first CLEC to request the build-out/space preparation. Thereafter, each new collocator will be required to pay its pro rata share of the space preparation costs. BA-NY's costs for space unoccupied by the first CLEC, plus interest, will be amortized and recovered on a pro rata basis from each future collocator maintaining physical collocation within a defined geographic area.

Under the PSC's plan, BA-NY, in consultation with the PSC staff, is required to develop an appropriate plan for the amortization of its costs, over a period of time to be approved by PSC staff, and to file this plan as part of its collocation tariff compliance filing. This plan is effective and pro-competitive because it eliminates the barrier to entry caused by those plans that require the first CLEC to shoulder the burden of the entire costs of the space build-out. Under the New York plan, each CLEC will be responsible for paying its proportionate share of the space

preparation costs, while the ILEC BA-NY, will be compensated appropriately for all space preparation costs incurred.

d) Floor Space Rent

The recurring charge imposed by many ILECs for the rent of floor space is both arbitrary and excessive. For example, Ameritech charges \$126.10 per square foot per annum ("psfpa"), GTE charges \$64.44 psfpa, BellSouth charges \$90.00 psfpa, and Pacific Bell charges \$46.02 psfpa.¹³ It is difficult to believe that space in Ameritech's central offices is either worth, or costs almost three (3) times as much as space located in Pacific Bell's central offices. Notably, *the per square foot rates for all four ILECs are higher than the most expensive office space in urban areas*. The Declaration submitted by David Rahm, ¶ 9.b.i, which is attached to these comments as Attachment B, provides further evidence regarding such unreasonable charges.

However, it certainly is within the Commission's jurisdiction under Section 251(d) to establish collocation policies. In this vein, MGC requests that the Commission issue rules permitting cageless collocation, cage sharing, common area collocation and adjacent collocation as discussed above.

e) Power

ILECs currently charge arbitrary and excessive rates for powering a collocation site. Such charges, on a per amp basis, range from \$5/amp with BellSouth in Georgia and Florida to \$554 per 40 amp minimum with GTE in California. Some ILEC's charge CLECs up to five (5) times what the CLEC would pay to the local electric utility for power to run its equipment. In

¹² See *Order of New York Public Service Commission Directing Tariff Changes for Non-price Terms and Conditions for Collocation*, Case Nos. 95-C-0657, 94-C-0095, 91-C-1174, and 96-C-0036 (Mar. 2, 1998).

¹³ These are the only ILECs with which MGC currently has physical collocation.

addition, ILECs often charge for power in forty (40) amp increments, regardless of the amount of power that is actually needed or used by the CLEC. In other words, if a CLEC's equipment requires only ten (10) amps of power, the CLEC nevertheless must pay for forty (40) amps. Moreover, in many cases, ILEC charge for the amount of amps *fused*, not drawn – a practice that is even more unreasonable.¹⁴

These examples illustrate how ILECs leverage their monopoly to make it difficult for CLECs to compete fairly and economically in the local exchange. Obviously, the imposition of such exaggerated and unreasonable costs affects the price of the product offered to residential and small business customers. Instead, the Commission should establish definitive rules requiring ILECs to charge CLECs only for the amount of power *actually used* (*i.e.* drawn) by its equipment at a reasonable charge per amp. The Commission also should clarify that ILECs are prohibited from imposing specific amperage requirements on collocating carriers, and must sell power on one (1) amp increments in amounts of capacity that a CLEC needs. In addition, and where possible, ILECs should be required to provide CLECs with the option of purchasing power from a competing vendor.

4. LECs Must Offer Collocation to Competing Providers in a Manner that Reduces Procedural Delays. (NPRM ¶ 144.)

a) Application Process

Certain ILECs take an unreasonable amount of time to determine whether space is available in a central office and at what cost. For example, BellSouth receives up to three applications from the same CLEC within a fifteen business day period for collocations in the same state, BellSouth has thirty business days (six weeks) to respond to the applications. If more than three applications are received, the interval is negotiated – presumably for a greater amount

¹⁴ See Attachment B, Declaration of David Rahm, ¶ 8.b.ii

of time. This policy slows the collocation process to a crawl. For example, MGC submitted eleven applications for collocation in COs in the Atlanta area on July 7, 1998. As of today, September 24, 1998, MGC has still not received responses for three of the eleven COs. Two responses were received on September 15, 1998. The other six applications were received at different times beginning on August 17, 1998. On the other hand, Pacific Bell responds within three (3) business days. If certain ILECs can respond quickly, others clearly have the ability to do so.

MGC requests that the Commission impose a specific timeframe within which an ILEC must respond to a CLEC's initial request/application for collocation. MGC suggests that a five (5) business day timeframe would be reasonable.

b) Build-Out Process

Each ILEC takes *at least* one hundred twenty (120) days from the time it receives a commitment from MGC to proceed with a build-out of physical space, to the time the space is ready to be accepted. However, this interval is unnecessarily long and easily could be reduced significantly with absolutely no repercussions other than a more timely delivery of service to CLECs. The actual site build-out generally takes no longer than a few weeks. As a result, the bulk of the allotted 120-day interval is "dead time" in which no visible activity appears to occur. Despite the fact that the ILEC has provided itself with significantly more time than necessary to complete the project, some ILECs, including GTE and BellSouth, consistently do not meet their commitment dates for the completion of the work.

For example, MGC committed to physical collocation for space at the Seal Beach Alamitos CO in Southern California on June 19, 1998, but GTE claims the space will not be fully prepared until November 13, 1998 – an interval of almost five months. Perhaps the most

extreme example is the case of GTE's Marina del Rey CO in Southern California. For this CO, MGC committed to space on February 13, 1998 and the space will not be fully prepared until October 30, 1998 – eight and one-half months later!

BellSouth has also been unsuccessful in meeting its commitment dates. Of fifteen physical collocations in the Atlanta area, it has taken BellSouth an average of five and a half months to prepare the space. This time is measured from the time that MGC committed to the space (which requires the payment of 50% of the build-out charges) until the time the space was completed and ready for MGC to accept. Unfortunately, BellSouth's performance has deteriorated over time. The last five physical collocation spaces prepared by BellSouth have taken seven and a half months, eight months, eight and a half months, five months and six months, respectively.¹⁵ Realistically, the ILECs require between ninety (90) and one hundred twenty (120) days to complete the provisioning of relatively simple jobs such as providing additional DS0 cross connect terminations, or running additional cables such as DS0s or DS1s. The latter are simple jobs that do not require more than a few days of actual installation work at the central office. Therefore, MGC recommends that the Commission impose a maximum preparation interval of one hundred twenty (120) days within which the ILECs must complete the build-out of CLEC collocation space.

In order to strictly enforce this preparation interval, and to encourage ILEC compliance, the Commission should impose financial penalties for ILECs that fail to complete the build out within its required interval. MGC suggests that the imposition of liquidated damages would be appropriate, given the fact that actual damages caused by delaying the entrance of a CLEC into

¹⁵ See attached Declaration of David Rahm, ¶¶ 9-15 for additional experience in dealing with ILECs.

the market are difficult to measure. The ILEC would be more likely to complete its work on time if it faced the threat of liquidated damages for nonperformance.

B. National Rules Will Eliminate Arcane and Disparate State Rules. (NPRM ¶ 122)

MGC and other CLECs remain subject to many arcane, widely diverse and often anti-competitive rules that are obsolete and antithetical to the goals of today's telecommunications market. For example, in Illinois, if MGC determines that a deposit is required to be paid by a high-credit-risk customer, MGC is compelled to permit the customer to make three equal payments over a three-month period. As a result, MGC must modify its billing systems to comply with the rules which vary from state to state.

Rules such as these were intended to protect the consumer at a time when there was no other source for local telephone service but the ILEC. As a result, the imposition of these rules on competitors is nothing more than a perpetuation of controls intended to manage a monopoly environment. In order to truly change this environment and promote viable competition in the local exchange, such rules should be eliminated, and free market forces should be permitted to reign in order to provide customers with genuine choice. In this way, if a customer does not like the service provided by one carrier, they are free to choose another.

C. National Rules Will Help CLECs Achieve Parity and Clarity for All Parties. (NPRM ¶¶ 122-123)

Section 251(c)(2)(C) imposes an obligation on all ILECs to provide interconnection to any requesting telecommunications carrier on "[r]ates, terms and conditions that are just, reasonable, and nondiscriminatory"¹⁶ In the *Local Competition Order*, the Commission noted that this "equal in quality standard" requires all ILECs to "[p]rovide interconnection between its network and that of a requesting carrier at a level of quality that is at least

¹⁶ 47 U.S.C. § 251(c)(2)(C).

indistinguishable from that which the incumbent provides itself, a subsidiary, or any other party.”¹⁷ This requirement, however, often is ignored by many ILECs.

The blatant disregard of this requirement has been experienced many times by MGC. For example, GTE does not install its own transmission equipment on central office floors that have not been tiled. However, GTE has turned over several cages to MGC that do not have tiled floors. Another example is the different access restrictions imposed on CLECs by ILECs, which limit the times during which CLECs may access their equipment, *e.g.*, only during office hours.¹⁸ It is imperative that the Commission establish rules and procedures for collocation that are equitable for both CLECs and ILECs. These rules should impose certain responsibilities on both parties that should be consistently applied and followed by both.

D. Specific Rules are Necessary to Eliminate Impermissible and Discriminatory ILEC Actions That Favor Affiliates (NPRM ¶¶ 129, 131)

1. Certain ILECs provide affiliates with more favorable terms and conditions than CLECs in contravention of Section 272 of the 1996 Act. (NPRM ¶¶ 129, 131)

During the 271 Collaborative process in the California, it became apparent that Pacific Bell has treated several of its affiliated companies more favorably than other companies that wish to collocate equipment at the Pacific Bell Central Offices. For instance, Pacific Bell admitted to allowing its affiliate, Pacific Bell Mobile Services, to collocate with Pacific Bell in a cageless collocation arrangement occupying *1900 square feet*.¹⁹ Both actions are directly contrary to Pacific Bell’s claimed company practices and evidence of preferential treatment of

¹⁷ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 115499, 15614 (1996) (“*Local Competition Order*”).

¹⁸ See Attachment B, Declaration of David Rahm, ¶¶ 25-36.

¹⁹ See Attachment C, Declaration of Scott Sarem.

the ILEC affiliate. Moreover, they result in exhausting already limited space capacity for CLECs.

MGC suggests that the Commission mandate the termination of all such practices, and mandate that all ILEC affiliates be governed by the same collocation rules and arrangements offered to CLECs.

2. As a means of ensuring ILEC performance, the Commission should adopt the LCI model and require ILECs to divest themselves into separate retail and wholesale organizations. (NPRM ¶ 129)

MGC is supportive of the Commission's tentative conclusions requiring ILECs that establish a separate advanced services affiliate to comply with structural separation and nondiscrimination rules that preclude the ILEC from discriminating in favor of its affiliate in the provision of any goods, services, facilities or information, or in the establishment of standards.²⁰ MGC also supports the Commission's tentative conclusion that "[w]hatever network elements, facilities, interfaces and systems are provided by the incumbent LEC to the affiliate must also be made available to unaffiliated entities."²¹

However, MGC believes that these proposals do not go far enough. In MGC's opinion, nothing less than a full wholesale/resale split will be effective. Therefore, MGC suggests that the Commission should follow the LCI model, advanced in LCI's January 22, 1998 *Petition for Declaratory Ruling*,²² and compel the divestiture of ILECs into separate retail and wholesale organizations.

²⁰ NPRM at ¶ 96.

²¹ *Id.*

²² *Petition of LCI International Telecom Corp. For Expedited Declaratory Rulings, a "Fast Track" Plan to Expedite Residential Local Competition and Section 271 Entry Through Establishment of Independent RBOC Wholesale and Retail Service Companies* (Jan. 22, 1998).

The LCI model attempts to make use of the ubiquitous ILEC network facilities that is the sole structure that extends to every telephone subscriber in the nation. In order to reduce the amount of frustrating obstacles that CLECs often have suffered at the hands of the ILECs, especially in the areas of OSS, the availability of UNEs, and pricing, LCI proposed that the Commission mandate a structure whereby RBOCs would be required to separate their retail and wholesale services into two separate subsidiaries. Under the LCI plan, the retail company would have substantial public ownership and independent management, and would interact with the wholesale company on the same arm's length, nondiscriminatory basis as it would with any other retail service provider. The intent of this proposal is to induce the promotion of vigorous retail competition by all telecommunications providers for all telecommunications services, provided to residential as well as to business customers, with the least amount of regulation required. MGC believes that the Commission should seriously consider the adoption of LCI's proposal in order to reduce the incentive ILECs have to provide CLECs with untimely, poor-quality provisioning and service.

ILECs have a structure that will always frustrate true competition because they have a retail and wholesale division that are in direct conflict with one another. However, the retail side of an ILECs business is where the majority of an ILECs revenue is generated, and thus it is the advantage of the retail interests that are a priority for ILECs. If the Commission acts to divide ILECs into separate wholesale and retail organizations, once separated, the ILECs' wholesale business would be more inclined to provision loops in a more efficient and cost-effective manner rather than intentionally interfere with the CLECs provisioning of unbundled local loops.

Under this plan, the incentive for the wholesale division of an ILEC to mishandle CLEC orders would be eliminated, because the wholesale division's success will not be measured by

the performance of the retail division. Instead, the wholesale division will only be profitable and successful if it can provide a quality product to its CLEC customers that is both reliable and delivered on time. This plan thus would impose the incentive necessary for ensuring quality, reasonable and timely ILEC service for its wholesale CLEC customers, which will in turn enable MGC and other CLECs to expand their networks across the nation to offer the residential and small business consumer a true choice in telecommunications products and services.

IV. THE COMMISSION SHOULD ESTABLISH NATIONAL STANDARDS FOR UNBUNDLED LOOP PROVISIONING IN ORDER TO ENSURE ILEC COMPLIANCE WITH STATUTORY OBLIGATIONS. (NPRM ¶¶ 154-156)

The most pervasive means an ILEC has to frustrate true competition is through the loop provisioning process. CLECs such as MGC rely on the ILEC to provide it with access to unbundled local loops and unbundled transport in order to deliver calls to residential and business customers. ILECs, however, generally devote minimal resources to their wholesale business. As a result, CLECs do not get the service that they need -- and that ILECs statutorily are required to provide -- to enable them to compete on a level playing field. Moreover, ILECs have a clear incentive to delay the provisioning process because if the ILEC does not provision an unbundled loop in a timely manner, it not only continues to retain its current customer, but, of far greater importance, it succeeds in undermining the CLEC's credibility and reputation with customers.

Delays, failures, deliberate mischief, and arbitrary system complexity by ILECs, individually and collectively, drive up the costs incurred by CLECs, forcing carriers like MGC to dedicate substantial resources to doing nothing more than policing ILEC performance. When a customer experiences service problems as a result of ILEC conversion or provisioning deficiencies, it is MGC, which must accept responsibility for the inconveniences and loss

suffered by the customer, even though MGC is without fault. Efforts by CLECs to formally address grievances in public forums succeed only in alerting potential customers to the prospect that they are likely to experience service problems if they do business with a CLEC, and the ILEC emerges the winner, having succeeded once again in tilting the playing field in its favor.

For these reasons, the Commission must establish clear mandates that will compel the ILECs to engage in consistent, reliable, and reasonable uniform loop provisioning practices. Specifically, the Commission should require ILECs to develop uniform centralized electronic ordering systems, provide CLECs with access to adequate numbers of properly-trained customer account personnel to process CLEC orders, and establish national standards to govern the conversion process. Finally, MGC recommends that the Commission impose minimum performance standards on ILECs to induce the type of reasonable and nondiscriminatory behavior that heretofore has been absent from the loop provisioning process and back these standards up with enforcement penalties.

A. The Commission Should Mandate a National Standard For All ILECs to Follow When Developing Electronic Ordering Systems and Ensure Adequate ILEC Performance With the Processing of Customer Orders. (NPRM ¶ 154)

Every ILEC with which MGC is interconnected employs a different set of standards for establishing an electronic interface ordering system.²³ This clearly illustrates the need for national standards.

For the most part, ILECs advocate an ordering system that utilizes the EDI format. However, here the similarities end. ILECs employ no recognized Ordering & Billing Forum ("OBF") standard while building their electronic order interfacing systems. As a result, each ILEC has a completely different ordering system to which CLECs must interface. This lack of consistency forces CLECs that provide service in multiple ILEC territories to develop unique

electronic ordering systems to interface with *each* ILEC – a task that is both administratively and financially burdensome. The CLECs only alternative, in the absence of an OBF system, is to utilize each individual ILEC's unique ordering software. This method requires CLECs to "key in" electronic orders twice. In other words, when MGC completes a Local Service Request ("LSR") for the GTE ordering system, it must duplicate this effort for its own ordering system. This is an unnecessary and intolerable situation. It is imperative that the Commission mandate a national electronic ordering standard so that CLECs like MGC will be able to create a singular ordering system that will be compatible with all ILEC ordering systems.

In addition to the lack of a uniform centralized ordering system, ILECs also routinely provide poor performances in their processing of CLEC orders, an unmistakable example of their ability to contaminate the CLEC ordering process. For example, companies like GTE routinely reject up to 50% of MGC's unbundled local loop orders for invalid or inexplicable reasons. For instance, GTE will receive an LSR at its ordering center and its personnel must key in the MGC ordering information into the GTE ordering database. Roughly 40% of the orders MGC submits to the GTE ordering center are copied incorrectly, which results in the order being rejected. These invalid rejects slow the provisioning process and frustrate competition. The Commission can ensure adequate performance by ILECs in this area only where it mandates performance standards and where it enforces such standards with serious consequences. If an ILEC is required to pay a fine, and accept financial responsibility for any resultant customer damage, the ILEC would be less inclined to make the kinds of errors it is currently making.

When Sprint first started providing local loops to MGC, its error rate for orders either filled late or with some other problem was over 42%. Sprint continued to perform at unacceptable levels until it sought authority from the Nevada Public Service Commission to

²³ See Attachment D, Declaration of John Boersma.

market jointly its local and long distance services. Suddenly, Sprint improved its provisioning performance in order to receive PSC approval.²⁴ This turnaround clearly demonstrates that ILECs can perform at acceptable levels when they have the proper incentive to do so.

In another instance, earlier this year BellSouth had been erroneously rejecting MGC's orders, missing conversion due dates, and acting generally non-responsive to a number of issues important to MGC as it attempted to provide service to residential and business customers in Atlanta. After exhausting all reasonable means to resolve the performance difficulties, MGC filed a complaint against BellSouth. Immediately thereafter, BellSouth met with MGC, agreed to certain performance standards and has made efforts to improve its provisioning process. These examples illustrate that, where ILECs have an incentive to do so, they can process CLEC orders in a reasonable and timely fashion.

Finally, many ILECs have no centralized ordering center, which causes needless delays and errors in the processing of CLEC orders for service/customer orders. For example, GTE requires CLECs seeking to provide service in any GTE territory to send their local service orders to an order processing center in Texas, where the orders are entered into an electronic ordering system. If the information was processed correctly by the GTE personnel in Texas, the local service order then is sent to an order processing center in Ft. Wayne, Indiana, called the Network Ordering Monitoring Center ("NOMC"). The NOMC then provides a firm order confirmation to the CLEC and ensures that the orders are fulfilled.

Due, undoubtedly, to the room for error created by the multiple locations throughout GTE's network in which CLEC orders must be handled and processed, the entering of erroneous information on MGC's local service orders is commonplace. Orders are routinely invalidly rejected. These "invalid rejects" certainly hamper MGC's ability to timely provision a

²⁴ See *id.*

customer's order for new service. In fact, MGC has experienced invalid rejects that have been passed back and forth with GTE *at least 7 times* before the correct order ultimately is entered and processed. Roughly 40% of all MGC orders taken by GTE for MGC have been erroneously rejected. The end result is that MGC has lost customers -- through no fault of its own -- due to the delays caused by GTE's institutionalized incompetence.

The Commission, therefore, should require all ILECs to establish a uniform electronic ordering system that is reasonably centralized to ensure that CLEC orders are accurately processed on a timely basis. The end result is that CLEC orders would be provisioned in a more efficient manner and competition would develop more swiftly.

B. The Commission Must Establish Clear Standards for the Conversion Process to Preclude Anti-Competitive ILEC Behavior Through the Physical Turn-Up and Provisioning of Local Loops. (NPRM ¶¶ 156, 158)

The next challenge in the provisioning process is the customer conversion process. Under the conversion process, after a CLEC orders a local loop from the ILEC and the order has been properly processed, the ILEC then must convert the customer from the ILEC's network to the CLEC's network. The critical process of customer conversion provides the ILECs with an easy opportunity to cause damage to a CLEC's reputation in the form of conversion delay and mishandling. For example, when an ILEC fails to properly convert a CLEC customer on a given due date, this leaves the CLEC customer without telephone service for a period of time. The customer inevitably surmises that the service outage would never have occurred had it not chosen to switch its service. As a result, in many cases, the customer will change back to the ILEC, even though the ILEC caused the outage.

C. The Commission Should Establish Minimum Performance Standards for all ILECS to Govern the Provisioning of Loops and Related Operational Support Systems. (NPRM ¶¶ 157-58)

In order to ensure ILEC compliance with its statutory obligations, the Commission should establish specific guidelines with which an ILEC must conform in its conversion of former customers to their new service providers. CLEC customers are well aware that they have a choice in local telecommunications service providers. The consequence, therefore, to a CLEC when an ILEC fails to provide a local loop in a timely manner, or disconnects a telephone number during conversion, or "mistakenly" deletes a CLECs customer's name from Directory Assistance, or sends the CLEC customer an accelerated bill for Yellow Page advertising, is far greater than any consequence suffered by the ILEC. This is because when the ILEC fails to provide adequate service to the CLEC, the ILEC will retain its existing customer, while the CLEC will suffer irreparable harm in the form of lost revenues and damaged reputation. Moreover, CLECs are forced to spend unconscionable amounts of time and money to ensure that the ILEC conforms with its minimal legal responsibilities for unbundling, interconnection and collocation. This is not an easy process, given the complicated and vast organizations that ILECs have created to field CLEC concerns, thus forcing CLECs to wade through several layers of administration before any meaningful resolution is achieved.

For these reasons, it is imperative that the Commission establish clear cut performance standards to which ILECs must adhere when converting former customers to their new service providers. Such rules must contain consequences for ILECs that attempt to retain retail customers through systematic wholesale blunders or deliberate service failures. Specifically, the Commission should require ILECs to conduct a fault analysis, upon request by the CLEC, to

determine the reason for any service outage or provisioning mishandling. Once it has been determined that the fault rests with the ILEC, upon request by the CLEC, ILECs should be required to provide written admissions of fault to CLEC customers explaining the problem and resolution. Finally, the Commission should require ILECs to maintain a public file for all such written admissions, and to produce a report on these admissions, upon Commission request. Without the imposition of penalties/consequences for failure to adhere to performance standards, ILECs will have no compelling reason to compete fairly with CLECs – especially once they have been permitted to enter into the in-region interLATA market.

1. Section 271 safeguards do not provide sufficient incentives to encourage reasonable and adequate ILEC performance in the areas of loop provisioning and OSS.

ILECs undoubtedly will argue that the imposition of national uniform performance standards for provisioning/conversion are unnecessary because Section 271 of the 1996 Act provides sufficient incentives for them to treat CLECs fairly and reasonably. This is untrue. To begin with, two major ILECs (Sprint and GTE) are not governed by Section 271. Moreover, MGC's experiences with all ILECs demonstrate that none have adequate incentive to compete fairly and that, in most instances, they do not perform adequately unless a competitor files a lawsuit or its regulatory equivalent.

2. Anti-Competitive Tactics Are Routinely Employed by ILECs.

a) GTE overcharges for local loops and routinely bills customers erroneously.

GTE routinely overcharges MGC for its local loop bills each month. This billing issue takes time and resources away from MGC because it forces MGC to meticulously review each bill, prepare a detailed billing dispute, and then show GTE how they erroneously billed MGC.

Furthermore, GTE routinely sends invoices for local loops to its former customers, rather than sending them to MGC.²⁵

While GTE represented to MGC that it would have this problem fixed by June 1, 1998, the problem continues. When GTE sends erroneous bills to MGC customers, it undermines MGC's credibility to the individual customer, which in turn damages MGC's reputation in the marketplace. This tactic, whether intentional or grossly negligent, has the effect of punishing those customers that switch to another service provider.

GTE also routinely and erroneously sends out accelerated Yellow Page bills to those GTE Yellow Page customers, usually small business customers, who have switched their local service from GTE to MGC usually to save money. These customers are horrified when a \$1,000.00 to \$10,000.00 bill arrives, requiring an immediate lump sum *payment just because the customer has changed their local service provider.*²⁶ While GTE continues to correct these erroneous bills, the fact remains that for MGC to receive a correction on behalf of its customer takes an inordinate and unreasonable amount time – both from MGC as well as from MGC's customer.

b) *GTE routinely removes customers from directory assistance databases.*

Another anti-competitive practice routinely employed by GTE is that when GTE customers convert to MGC they are often removed from the Directory Assistance database.²⁷ In order to correct this problem, of course, MGC must know that it is happening. However, MGC currently has no means by which to discover such database deletions, and is only made aware of the problem when a customer discovers that his business is no longer listed, due to a substantial

²⁵ See Attachment C, Declaration of Scott Sarem, ¶16.

²⁶ See *id.* at ¶17.

decrease in the volume of calls (and, often, demonstrable business loss). This is just another example of how an ILEC attempts to penalize consumers when they change local service providers in order to receive superior customer service and affordable pricing.

c) GTE routinely delays deliverance of customer information.

A final example of GTE acting in an anti-competitive manner is GTE's practice of delivering customer service requests in an untimely manner. As the Commission knows, a CLEC must have certain customer information in order to properly prepare a local service order and provision a local loop for a prospective customer. While GTE represents that these requests for customer information should be filled within twenty-four (24) hours of being submitted, GTE consistently returns customer service requests to MGC after forty-eight (48) hours has elapsed.

3. Performance standards should be enforced by substantial penalties to ensure ILEC compliance. (NPRM ¶ 157)

As mentioned above, Sprint initially provisioned local loops for MGC with alarming ineptitude. After MGC petitioned the Nevada PSC for the adoption of absolute performance standards, Sprint improved its service to such a degree that the PSC allowed Sprint to jointly market local and long distance service. Sadly, once Sprint received what it was seeking from the Nevada PSC, it started to backslide and once again provide poor service to MGC. This type of behavior is not benign neglect, rather it is absolutely culpable conduct for which ILECs can and must be penalized.

Accordingly, it is imperative that the Commission adopt ongoing performance standards that ILECs must meet, and which carry meaningful penalties sufficient to ensure compliance. MGC, like other CLECs, does not want to receive penalties, it only wants to receive

performance. Therefore, any penalties imposed must be so substantial that the ILEC would never risk their assessment.

V. THE COMMISSION SHOULD ADVANCE COMPETITION BY ESTABLISHING RULES TO ENCOURAGE THE DEVELOPMENT OF IP TELEPHONY.

A. The Commission should help to encourage the development and deployment of IP- Telephony.

MGC believes that the Commission has taken on an important task in initiating both the NOI and the NPRM to fulfill its mandate under Section 706 of “encouraging the deployment on a reasonable timely basis of advanced telecommunications capability to all Americans.”²⁸ In addition to the detailed information provided above by MGC regarding the collocation, loop unbundling and OSS issues associated with the deployment of advanced telecommunications services, and the specific need for the Commission to develop national standards to which ILECs must adhere in fulfilling their statutory obligations under Section 251 of the 1996 Act, MGC would like to express its views to the Commission regarding the urgent need for the Commission to establish specific rules to define and classify all advanced telecommunications service, and in particular, IP-telephony.

MGC believes that it is unlikely that IP-telephony or other advanced telecommunications services will proliferate to the benefit of the American consumer and in accordance with Congress’ mandate under Section 706 without the immediate intervention of the Commission. Moreover, in addition to the regulatory classification of these services, the Commission must revise its existing access charge structure to specifically preclude the imposition of access charges on providers of IP-telephony. To permit such artificially created subsidies to be assessed on such providers will serve only to endanger the widespread deployment of this service and to

²⁸ 47 U.S.C. § 706 (a).

deny consumers, especially residential consumers, the cost savings associated with IP-telephony and the benefits of competition.

IP-telephony provides a vehicle through which carriers may provide more cost-effective telephone service to the American consumer. One of the issues currently inhibiting the wide-spread deployment of IP-telephony is uncertainty regarding the definitional and regulatory structure of this advanced telecommunications service. The Commission should use the mandate issued to it by Congress under Section 706 of the 1996 Act to encourage the widespread deployment of IP-telephony, and the competitive pricing that inevitably will accompany the deployment of this advanced telecommunications service. One of the most important things that the Commission can do to advance the proliferation of this type of service and to accommodate changes in both technology and the industry is to help create regulatory certainty by establishing protections for the provision of IP-telephony, and making necessary changes to the existing access charge structure. In addition, the Commission should issue specific rules requiring ILECs to provide CLECs with the interconnection, collocation and unbundling services that they will need to deploy IP-telephony.

The Commission has developed definitions for two (2) types of IP telephony service: (1) "computer-to-computer" and (2) "phone-to phone." In its *Universal Service Report to Congress*, released earlier this year, the Commission distinguished between computer-to-computer IP-telephony and phone-to-phone IP-telephony, noting that users of computer to computer IP-telephony utilize software and hardware at the customer premises to place calls between two (2) computers connected to the Internet.²⁹ The Commission acknowledged that the Internet Service Provider ("ISP") over whose network the computer call passes may not even be aware that

²⁹ *In re Federal-State Joint Board on Universal Service, Report to Congress*, CC Docket 96-45 ¶ 87 (rel. Apr. 10, 1998).

particular customers are using IP-telephony software, because IP packets carrying voice communications are indistinguishable from other types of packets.

As the Commission has explained, however, phone-to-phone IP-telephony is different, because it contains the following elements: (1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does not require the customer to use CPE different from CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the PSTN; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (4) it transmits customer information without net change in form or content.³⁰ In the *Report & Order*, the Commission states:

“[s]pecifically, when an IP telephony service provider deploys a gateway within the network to enable phone-to-phone service, it creates a virtual transmission path between points on the PSTN over a packet-switched IP network. These providers typically purchase dial-up or dedicated circuits from carriers and use those circuits to originate or terminate Internet-based calls. From a functional standpoint, users of these services obtain only voice transmission, rather than information services such as access to stored files. The provider does not offer a capability for generation, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information. Thus, the record currently before us suggest that this type of IP telephony lacks the characteristics that would render them “information services” within the meaning of the statute, and instead bear the characteristics of telecommunications services.”³¹

Ultimately, however, the Commission passed on classifying these providers as “telecommunication services” providers, pending further research and review of the issue.

The definitional distinctions between the two types of IP-telephony are important because they directly implicate the type of regulatory classification that each service is allotted and the rules and regulations that accompany that classification of service, and, by extension, that apply to the provider of that service. As a general matter, Title II common carriage requirements apply

³⁰ *Id.* at ¶ 88.